By email to codereform@beis.gov.uk and industrycodes@ofgem.gov.uk

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September 2019

Dear Mithila Manage and David Hall,

CONSULTATION ON REFORMING THE ENERGY INDUSTRY CODES

We welcome the opportunity to respond to this Consultation.

By way of background the Balancing and Settlement Code (BSC) Panel is at the heart of governance of the Balancing and Settlement Code. As such it has a unique perspective on the issues involved in this Consultation. Appendix 1 has more details on our ten voting members who bring together decades of power industry experience from a tremendously wide perspective including new tech startups, large and small, generators and suppliers, green and conventional companies, academic and commercial, operational and strategic. All Panel members are active in the industry and well placed to steer the Code through the energy transition.

The Panel maintains its independence through an independent Chair, three independent members, and two members from Citizens Advice. Representatives of Ofgem and the Distribution System Operators routinely provide valuable input, and connection to these organisations when needed, to enhance our decisions. We are proud of our work and get praise from all sectors of the industry.

The Panel is set up to consider proposals to change the BSC and is there to operate in the interests of the market, rather than represent any particular constituency or group of Parties. In this way the Panel differs from some other industry codes. Panel members are passionate about ensuring that the Code management runs smoothly and that the interests of all Parties and consumers are considered.

Views expressed in this response are those of vast majority of the Panel, and do not seek to represent those of Elexon or Parties to the BSC. We summarise our overall considerations below and respond to specific consultation questions in Appendix 2.

Firstly, we really support your initiative to make the Codes more effective and aligned. Interestingly we see more industry change is coming now from new tech startups and innovative business models (often from outside the industry) rather than arising from the energy transition.

However, we are also concerned that the Consultation hasn't identified the key root causes of the problems it describes. Many of the issues outlined are very specific to individual Codes and not widespread, as might be inferred from the consultation. We would therefore caution that when looking for solutions that it would also be prudent to consider best practice amongst the Codes and try and introduce commonality of approach. This would help address the simplification agenda, which the BSC Panel supports. For example, the BSC Modifications only take 4-5 workgroups and could be seen as an exemplar for other Codes to consider how changes progress so speedily compared to them.

While we agree with the general issues identified in the Review, we believe that there is an overarching need to ensure that the Codes are robust and workable, remembering that they underpin the legal and commercial basis for the industry (new entrants and incumbents) to operate and that their complexity reflects the physical nature of the product and the need (in electricity) to balance the system by half hour. Some modifications take longer than is desirable, but modifications often see the industry working together to create enduring solutions to highly complex issues. In the BSC, we have seen this in our work on developing innovative approaches to allow meter splitting (Modification P379 – Multiple Suppliers through Meter Splitting[1]) – on the face of it, a year-long process, but in our view needed to consider all the "devil in the detail" and ensure a robust enduring solution, with accurate cost attribution.

Industry involvement in the Codes is vital – it ensures that parties who have direct connection with customers and have their own complex IT systems to interface with customers are involved in developing workable arrangements. It also serves to bring diverse skills and tremendous knowledge to solve new challenges and learn from past change development. The change suggested in the consultation to reduce industry's control and influence, we believe, will lead to inefficiency, duplication and solutions which will very likely not dovetail with industry systems and customer propositions. Whilst we can appreciate concerns with the potential for industry manipulation in some Codes, we believe this can be dealt with simply by having high levels of independents in each Code's Panel. Ultimately where a change to a Code is material in nature then Ofgem is responsible for directing the change to the Code, with Panels making recommendations to Ofgem.

The Panel believes that adding a new Strategic Body to the industry to coordinate the Codes will be a retrograde step, with more bureaucracy, which would impede progress. Our concerns are predominantly around the governance of such a body, for example how would the Strategic Body turn policy into a direction to the Codes, and in some cases, multiple Codes and what will be the consequence if the change were not needed? We would recommend that it would be more beneficial and prudent to allow the Codes and industry to respond to the challenges of Government Policy. To date the Codes have delivered on Government Policy on Climate Change, in particular this can be seen in the large scale take up of renewable generation, where industry has enacted changes to the codes to help deliver it.

Furthermore, our concern regarding the Strategic Body is around the expertise that it would require, as we see that changes to the Codes often require technical understanding rather than strategic, especially in dealing with the IT systems that underpin the industry. If the Strategic Body has to have extensive expertise, then it could drain the resources from the existing Code Managers or from the Parties or Ofgem, which could exacerbate the skills issues that already exist.

We have some sympathy with frustration of historical efforts to deliver change across several Codes – but as explained earlier this could be addressed by having more common processes in the Codes and Ofgem working in a more 'hand in glove' with the Codes. Ofgem already has the powers to influence the Codes individually and collectively, and we'd be happy to work with BEIS and Ofgem to understand how this could work better. While we find the SCR process unwieldy, our experience is that it works much better when Ofgem has a constructive involvement (as with the faster switching SCR). However, we recognise that

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[1] https://www.elexon.co.uk/mod-proposal/p379/

Ofgem does not always have the resource or funding to be able to deliver SCRs and therefore believe that this is an aspect that should be looked at. In addition, we see benefit if the Codes' processes were more aligned to ensure that the entire process is much easier. Model 1 could be workable in this way, (having Ofgem as the Strategic Body) although we believe Ofgem would not need any additional powers e.g. licensing.

A pragmatic way forward would be to address issues in individual Codes specifically, replicating good practice and addressing bad. This could get earlier benefits through a staged process rather than over the 5-7 years likely to be needed for a major reform. We do see benefit in aligning the Codes more closely, for example their governance constitution, applicable objectives, modification processes, and the role of their Code Manager. We believe that structural conflicts of interest where Code Managers have a commercial interest in the Code arrangements they run (i.e. NGESO and the CUSC and Grid Code) should be removed, and we are concerned profit motivation leads to perverse consequences e.g. not allocating sufficient resources to code work, with a view to improving profits for the company who owns the Code Manager. In our view, requesting prioritisation of modifications is symptomatic of resource shortages and could be open to abuse by interested parties. We outline more suggestions and good practice examples in our answers to the individual questions in Appendix 2.
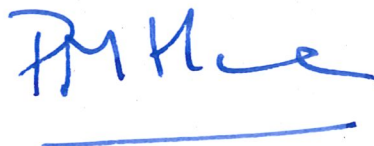
We also see benefits from merging some Codes that cover business areas which are most likely to require regular coordination between them. We do not believe that putting all the Codes together is workable: the span of control will be too much. In particular, we see benefits in merging BSC with the CUSC, and the Grid Code with the DCUSA. It is a moot point as to whether it would be more effective to merge them and then leave the Code Administrator to align them, or the other way around. However, with many Codes they need to be reformed before any thoughts of merging them with others.

We would welcome further direct dialogue with the Review team. Moreover, we would be delighted if you could join one or more Panel meetings in the coming months to experience the Panel's deliberations and see how the BSC operates at first hand. While each Code is governed and managed differently, feedback from our customers continues to rank the BSC amongst the highest. We want to be able to help you with Codes Review work to make it a success and therefore would urge that if there is anything you believe that we could help you with that you get in touch.

Yours sincerely

Michael Gibbons CBE, FEI
BSC Panel Chair
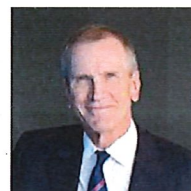
Dr. Phil Hare
BSC Panel Deputy Chair

APPENDIX 1 – BSC Members

Below we include brief biographies of our Panel members to show the wealth of national and international experience as well as their active engagement with the industry on technical and commercial issues. Their background means that their opinions on the issues facing the Code can be relevant, innovative and robust, and the make-up of the Panel, required by the Code, fosters balanced decisions.

Michael Gibbons CBE FEI
Chairman
Michael was appointed as the Chairman of the ELEXON Board and Balancing and Settlement Code (BSC) Panel in October 2013 and reappointed for three more years in November 2016. He brings with him a wide range of industry experience, having spent 11 years at director level with Powergen.

Dr Phil Hare
Independent Panel Member and Vice Chair

Phil has over thirty years' experience in the energy industry and is a Senior Associate with Pöyry Management Consulting.

In a long career in the Executive Committee at Pöyry, Phil advised on many aspects of Europe's electricity industry, especially working at Board level with companies entering new geographies and moving into new business areas. In more recent years his work focused on how deployment of renewables will fundamentally affect the nature of the industry. Under his guidance Pöyry spearheaded the full understanding of intermittency on power markets.
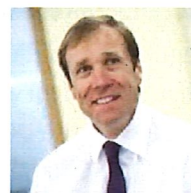
Before joining Pöyry he held a variety of senior management posts over fourteen years at Powergen plc (latterly EON-UK) in both strategy roles as well as and operational wholesale and retail businesses.

Prof. Derek Bunn
Independent Panel Member

Derek W. Bunn is Professor of Decision Sciences at London Business School. Author of over 200 research papers and books in the areas of forecasting, econometrics, decision analysis and energy economics, he has been Editor of the Journal of Forecasting since 1984, a previous Editor of Energy Economics, and Founding Editor of the Journal of Energy Markets.

He has advised many international companies and government agencies in the energy sector as well as expert evidence in arbitration and litigation.

Diane Dowdell
Industry Panel Member

Between 1994 and 2002 Diane worked at Eastern Natural Gas (later TXU) where she helped develop Eastern into one of the country's leading gas trading businesses. She innovated some of the first UK NBP gas supply agreements to power station developments and later moved into negotiating structured electricity and gas deals that culminated in the world's first ever Virtual Tolling Agreement with Enron in 1997. In 1998 Diane joined Entergy Wholesale Operations where, as Head of Commercial Operations, she was involved with negotiating fuel and electricity contracts for Entergy's Power developments both in the UK and Europe where she gained widespread experience of the European Gas and Electricity markets.

Diane joined Tradelink Solutions in 2003 as Commercial Director. Originally employing 4 staff Diane has helped develop the TLS Energy Group of companies into an independent vertically integrated energy company employing over 50 staff and comprising TLS Hydro, TradeLink Solutions Ltd and LoCo2 Energy Supply Ltd. TradeLink Solutions provides consulting, training and commercial services to energy companies, predominantly in the renewable energy sector.

Lisa Waters
Industry Panel Member

Lisa is a founding Director of Waters Wye Associates (WWA) a specialist energy consultancy specialising in GB gas, power and retail issues. She is an economist with over twenty years' experience in the energy sector, and as well as the BSC works on codes such as the CUSC, DCUSA and Grid Code.

She has worked with a wide variety of energy companies, from gas and coal generators to smaller scale renewables and ancillary service providers, as well as representing customers, working for non-physical traders and new market entrants.

Having worked in and with a wide variety of businesses Lisa has a broad experience in the corporate decision-making process. Her work is commercially focused bring support to numerous generators (using a wide variety of technologies), traders, suppliers and investors.

Working as part of clients' teams, Lisa has provided full regulatory services covering; BSC and CUSC accession, construction and connection agreements, ancillary services contracts, systems qualification and registrations, on-going interface with codes (BSC, Grid Code, CUSC, DCUSA, etc.) and National Grid; market monitoring and development of HMG policy such as the CM, CfDs, EU ETS, IED, etc.

Mark Bellman
Industry Panel Member

Mark is a Chartered Management Accountant with 30 years' experience in the power utility business. He is currently Head of Energy Settlement for ScottishPower Retail.

During his career he has implemented multi-£m systems as project manager, delivered ScottishPower's Retail BETTA Programme and managed the build and use of IT systems across a range of operations. He has a wealth of experience in energy settlement both from operational and financial perspectives and is familiar with industry codes and change processes.

Recently he has been more involved in the gas industry, on the Performance Assurance Committee and UNC Mod Panel amongst others.

Mitch Donnelly
Industry Panel Member

Mitch began work in the energy industry in 1998 initially as an analyst with BG Storage before moving to Transco and then British Gas where he has held a number of roles including; integration of the Enron Direct and Electricity Direct settlement systems and processes following their acquisition by Centrica; development of British Gas settlement systems and processes to support Smart metering roll out including managing relationships with Supplier Agents and TPIs. He has supported development and roll out of a number of specialist products including Time of Use, Smart Homes, Microgeneration and community energy.

Mitch is currently the head of UK Energy Settlements which encompasses a range of responsibilities including BSC and UNC compliance and performance, Supplier Agent management, leading the transition into Half Hourly Settlement and the implementation of project Nexus.

Stuart Cotten
Industry Panel Member

Stuart joined the energy industry in 2001. His current role is Regulation and Compliance Director for Drax Group, which encompasses wholesale, retail and financial market arrangements, business ethics policy and assurance, and biomass sustainability compliance. He joined the BSC Panel in 2010, assuming the roles of Panel Sponsor to the Trading Disputes Committee and member of the Credit Committee.

Stuart currently chairs Energy UK's Generation Committee and is a member of the Electricity System Operator's RIIO2 Stakeholder Group.

Tom Edwards
Industry Panel Member

Tom has been working in the electricity Industry for five years. His roles include engaging with policy and regulatory change and advising clients in the supply and generation markets on market entry and regulatory change. Tom is currently employed by Cornwall Energy a leading independent consultant and provider of market intelligence on the UK energy sector.

Victoria Pelka

Consumer Panel Member

Victoria is a senior policy researcher at Citizens Advice. She represents the interests of British energy consumers in policy developments and negotiations around energy networks and systems. Her current areas of work include the next price control of network companies (RIIO-2), Electric Vehicles, demand side response and electricity settlement reform.

She has six years of experience in research and evaluation. Previous positions include the energy transition, community energy and fuel poverty.

Stew Horne
Consumer Panel Member

Stew leads the Energy Networks and Systems team at Citizens Advice, representing consumers in a wide area from network price controls, to electricity charging reform and half-hourly settlement.

He is a member of Ofgem's RIIO-2 Challenge Group and represents BEUC (the European Consumers' organisation) on ENTSO-E's Advisory Council. He was a civil servant for 15 years, working on a wide range of high-profile consumer focussed projects including Digital Switchover, Nutritional Food Labelling.

Stew spent 4 years at Ofgem where we worked on the Retail Market Review, managed the Confidence Code and delivered key parts of the Consumer Vulnerability Strategy.

Jon Wisdom
NGESO Panel Member

Jon joined the energy industry in 2005 holding leadership roles across regulatory and commercial functions at RWE npower before joining National Grid Electricity System Operator in 2016. He has extensive experience of the impacts that industry changes can have on the end consumer in both gas and electricity markets as a result of his roles in gas and electricity settlement, customer pricing, network charge forecasting and energy hedging. In his current role he is responsible for leading regulatory development within the NGESO including the NGESO's input to Ofgem's reviews of charging in the market. He is the NGESO Panel Member for both the BSC and the CUSC.

APPENDIX 2- Responses to specific Consultation questions

1 BACKGROUND AND SCOPE

> **1. Do you agree with our four desired outcomes for the code governance landscape by the mid-2020s?**

We are concerned that these are far to broad brush to be useful – they need to be much more targeted.

The most important attribute of the Codes is that they are robust in that they provide a stable commercial and technical basis for the industry to operate. For example, the BSC is best typified as a multi-lateral contract between parties – as such changes to it need to be considered thoroughly to create enduring arrangements, including across Codes. An important aspect of the Codes is that they do not differentiate between small and big parties. As contracts, they offer the same equal terms to all market participants.

In our view the Review should focus on bringing individual Codes' performance up to a much better level, improving the mechanisms by which Codes work together, and having Ofgem work more hand-in-glove cooperatively with the industry.

On the four outcomes:

- Effective Code Bodies should already be working with Parties (existing and new entrants) to help them understand the rules that apply to them without needing to read the minutiae of the legal texts. In the case of technical conformity, we would expect the Party to have suitable technical competence. Major rewriting of the Codes is likely to be an extremely expensive exercise with the major beneficiaries being lawyers and consultancies.

- We definitely agree that Codes should be speedily helping the market respond to policy, and technical and business model innovation – the BSC has already approved the Sandbox modification, is working on novel meter-splitting arrangements to allow EV charging in houses. However, we do not agree that the Codes themselves should anticipate the direction of the market – this is not "market driven" and it implies that the Codes should know better than the market.

  However our experience is that the Regulator cannot or will not act on Panel initiatives that do reflect on the Panel's deep market knowledge: for example: the Panel has repeatedly voiced concern to Ofgem about the proliferation of "Supplier in a Box" startups that lack suitable skills and financial strength but to no avail. The recent dubious market behaviour of Solarplicity was brought to Ofgem's attention many months ago, but Ofgem did not seem to believe it could take any action.

- While we agree that the Codes need to be agile and responsive to consumers, it is even more important that consumers have confidence in a robust system, even if it takes time to develop effective and enduring solutions. In our experience, the representation from Citizens Advice on the BSC Panel is an excellent model for ensuring consumers' needs are considered.

- From a BSC perspective we do not see that accommodating more market participants is relevant to this Review, although it may exist in other codes. On a more general level there seems to be insufficient evidence to show there is a problem across the industry.

Regardless of the merits of any future industry vision, a staged approach to the reform is likely to bring more benefits sooner rather than trying to carry out a major long-term effect.

> **2. Do you agree with the problems we have identified (in chapter 1 – Background – and in later chapters), and that they present a persuasive case for reform of the current framework for energy codes?**

The problems identified are at much too high a level to be useful – the Codes and the Code Bodies' performances are so far apart that it is completely inappropriate to take high level averages. Furthermore, all evidence needs to be contextualised – for example many modifications are implemented in line with the regular systems updates. This suits the industry, and is cost-effective, but the headline figures quoted do not consider this.

As described in many parts of subsequent sections elsewhere in our response, many of the problems can be attributed to the way in which Ofgem (and occasionally BEIS) interacts with the Codes – collectively and individually.

Fragmentation and lack of coordination:

- We need a robust analysis of the implementation periods for each Code. Furthermore, the time for Ofgem to approve Modifications should be highlighted. Ofgem approval for BSC Modifications has typically accounted for 10-15% of the total time to decision, but the outliers can be far longer. For example, P361 (Revised treatment of BSC Charges for Lead Parties of Interconnector BM Units) has been sitting with Ofgem for over a year with no satisfactory explanation to the Panel as to why no decision has been forthcoming. The Panel will always consider if faster track self-governance processes can be implemented.

- It would be better if concrete examples were identified for when the Codes have lagged behind government policy. There are other examples where the industry has led the initiative e.g. to allow storage to participate in the markets, where arguably policy and regulation have followed.

- There should be no shame in the Codes reacting to existing problems – this is when there is a clear need for change. "Existing problems" are in many cases driven by the industry looking forward and there being a clear cost-benefit case for change.

- Where change is needed across several Codes, the main problems have been mainly due to the different modification processes (e.g. number of alternatives), different applicable objectives, and the potential for the benefits arising in a different Code that bears the costs. It would be far better for the change to run as a more consolidated fashion.

- On the face of it, the Code Panels and Bodies appear fragmented, and we were surprised that the REC did not take the opportunity to incorporate the SEC. However, the review should consider what is a pragmatic span of control in any consolidation.

Lack of incentive to change:

- We do not see it is the job of the Codes to "prepare the industry for the future" – this is much better left to the market participants because they are closest to the market need (we come back to this point in more detail elsewhere in this document). This should be the job of the Regulator i.e. ensuring the regulatory landscape, including the instruments that sit below this (licences and codes), are fit for the future.

- As there have only a handful of SCRs to date, we do not accept this as evidence of "an increasing need for Ofgem to intervene". This should be seen as part of normal business when the Codes interact, reflecting that most of the time they do not.

- When the Code Panels have asked for Ofgem to take an active participation, it has taken a stand-off position. While P272 (change of meter classes 5-8 to HH) is often cited as an example of poor Code co-operation, it would have ran far more effectively if Ofgem had heeded repeated calls from the Code Bodies to work with them and taken a consistent line in its guidance of timescales.

- It isn't fair to suggest that the industry is not leading change. Whilst we cannot speak to all Codes, we can acknowledge that some changes have proved difficult and taken too long, but there are many more examples of mods delivering innovation or against customer needs in the BSC that have been driven by industry over many years:

  - ❖ P100: Extension of demand side trading units to allow trading of embedded benefits (this created the ability for generator to trade embedded benefit with any supplier, and allowed smaller suppliers to compete with larger ones providing PPAs)
  - ❖ P342: change contract submission deadline to improve liquidity in short-term market
  - ❖ P354: removing spill payments for non-BM STOR to level the playing field in reserve
  - ❖ P361: removing specified BSC charges from interconnector administrators to improve competitiveness with Europe
  - ❖ P366: amending supplier charges for hard to reach sites to improve competitiveness
  - ❖ P364/P363: clarification and simplification of registering BMUs to account for new forms of generation connecting
  - ❖ P375/P376: behind the meter settlement and baselining for DSR in balancing services
  - ❖ P379: multiple suppliers
  - ❖ CMP264/CMP265/P348/P349 – changing TNUoS embedded benefit calculations to improve competition

  And some very significant mods that would have been impossible without Industry involvement for example

  - ❖ P344: Project TERRE implementation and wider BM access
  - ❖ P350: locational losses

Complexity

- In our experience industry is very interested in the aspects of the BSC that affect them, so we do not accept the implication of the statistics quoted – it would be interesting to benchmark the statistics quoted to show lack of participation against responses to comparable Ofgem and BEIS consultations.

- In general we observe that small companies and new entrants lack the capacity to engage in consultation and at the BSC Panel meetings members draw on their experience to consider issues from these types of company. We would add that for those that do engage with the Panel, their opinion is treated with equal regard regardless of the size or nature of their business. We applaud Elexon's recent introduction of pre-Panel calls to help all Parties understand the changes.

- The BSC Modifications take typically 4-5 workshops – the figure of 16 looks very wrong.

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3. Do you have additional evidence on the performance of the current framework?

In this response we advocate that a pragmatic way forward will be to build on the best performing Codes' practices. Ofgem's annual survey of Code performance gives strong evidence yet it is not referenced. BSC Panel meetings in the past two years have made the point that it is a shame that this Review is not actively being used as an agent for change.

4. Do you agree with our proposed scope reform?

Largely.

However, the DCC is the only example of a licensed Code Body, and its financial performance should be included in any argumentation for licensing and competitive tendering. Its 15% allowed returns and burgeoning costs will show a major flaw in the argument for licensing Code Bodies.

We agree that the Review shouldn't cover system delivery but make the point that there is a strong benefit in having the relevant Code Body deliver the systems – this places a natural alignment between responsibility and authority.

5. Are there any codes or systems that we should only apply a limited set of reforms to?

As stated above, the Review can achieve significant improvement and do so in a shorter timeframe by focusing on individual Code performance first. This means taking steps to align the more obvious discrepancies between the Codes; changing their governance/ownership to remove commercial conflicts and obliging Ofgem to proactively work with the Codes. A quick win to achieve some of these would be merging the BSC/CUSC under Elexon's management, as well as putting the Grid Code and Distribution Code together.

2 VISION & OPTIONS

6. Do you agree that the four areas for reform are required?

Providing Strategic Direction

- The annual Ofgem Strategic Narrative should fulfil this requirement. Other BEIS documents fulfil a similar role.[2]

- Ofgem already has the influence and power to carry this down to a working level, but at a Code level, we see Ofgem fail to provide suitable engagement – informally and formally

- Industry should decide when and what changes it needs to the Codes, and the idea of removing this role to a separate body appears to be another completely unnecessary layer of bureaucracy.

Empowered and Accountable Code Management

- Code Managers should be accountable to the industry which is the "customer" of their "services".

- Removing the accountability for the Codes away from the industry risks it becoming an ivory tower.

- It makes a lot of sense to remove clear structural conflicts of interest where possible – for example the NGESO running the Grid Code and CUSC – and the profit incentives that Gemserv and Electralink have as commercial businesses will skew strategic direction in their respective Codes. Their motivation should be the Codes' purpose, not simply profit.

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[2] One such example is Smart Systems and Flexibility Plan developed by BEIS in 2017-2018. This is an initiative where codes bodies needed to be a part of. While this initiative appears to be still ongoing, in practise little information is available on BEIS' website. This could have been a useful forum to effect further practical alignment between policy, regulation and detailed initiatives and code modifications.

Independent Decision Making

- We completely reject the view that decision making should be removed from the industry – this would also remove the expertise and insights that those closest to end consumers bring to the sector.

- In the BSC Panel the high level of independent members (50% plus the Chair who is also independent) and the diversity of its constitutionally elected appointees gives the industry a great confidence in it reaching fair and considered decisions. Furthermore, BSC Panel members do not represent any particular organisation – they are charged with bringing their individual experience to bear on Panel business, and not advocating from any particular company position. The Panel members themselves bring deep and practical industry knowledge to enhance its processes. All Code Panels should have similar arrangements.

Code Simplification and Consolidation

- In the BSC we do not see need to improve accessibility – probably because Elexon takes a great deal of care in training of new entrants and existing players. ELEXON has led the way in many ways amongst the Codes to improve access: for example, it has also been working hand in hand with Ofgem's Innovation Link (regulatory sandbox) to provide advice on new business models and innovative services being developed by innovators

- We have experienced frustration, but made it work, when modifying the BSC when other Codes are involved (either as a primary or secondary role). For example, it is possible that with cross-code changes the benefits accrue in a different Code from the one bearing the costs. There are also challenges of timing (of processes, meeting dates), and the way in which alternative mods are generated. This also makes it difficult and inefficient for the Parties to engage in the process.

- While we do not believe that all Codes need to be the same (as they cover very different aspects of the industry), however many of the issues identified can be eliminated by aligning their processes and a light hand from Ofgem working with them.

- There is certainly not a case for merging the entire set of Codes into a single entity – the costs of this will be very high. However, we do see sense in merging BSC/CUSC and Grid Code/Distribution Code on the grounds that this will be an effective way of aligning them and that they will cover many of the cross-Code situations. In the longer term there could be logic in merging in the wholesale related parts of DCUSA to the BSC/CUSC.

7. Do you agree with the two broad models outlined?

We do not agree with either model and believe that the vast majority of the objectives of the Review would be achieved through more pragmatic refinement of the individual Codes, some Code mergers and having Ofgem take a more proactive and engaged role.

More specifically Model 1:

- We argue that Ofgem should be able to carry out the role of the Strategic Body as described in this consultation: it already has responsibility, rights to change codes, experience and practical knowledge of the governance. Any argument to the contrary needs to supported by strong evidence.

- In terms of accountabilities, the Code Managers should be accountable to Parties

- Compliance monitoring is already part of the BSC – the Performance Assurance Board has developed industry leading risk-based assurance processes, and the Code has a range of escalating provisions for penalising compliance failure. We note that the REC is following suit with its own performance assurance regime.

Model 2 has major structural flaws because:

- In addition to the problems identified above for Model 1 its span of control is far too wide.

- Its accountability is even further removed from industry, so the scope for it making poor decisions is even greater.

- It will need unnecessary and duplicated industry expertise which will turn into competition for a relatively limited pool of talent.

- We are concerned about the potential for even greater cost burden on the industry

8. Which model do you believe will best deliver on our desired outcomes?

We do not think either is a pragmatic way forward, but Model 1 is closer to our thinking of a realistic way to improve the industry performance by the middle of the 2020s with Ofgem taking the role of the Strategic Body.

It will be much more effective to take a staged approach targeting the main areas of underperformance and building on the Codes and Code Bodies that are delivering well.

9. Do you agree with the changes to the role of code signatories we are proposing?

No – a realistic view of the need for industry expertise and therefore involvement has to be factored into the proposals. If industry does not do the detailed technical work, the Review should clearly estimate the resources needed to replace them – presumably in Ofgem.

3 PROVIDING STRATEGIC DIRECTION

> **10. Do you agree there is a missing strategic function for codes development in the energy sector and introducing a strategic function with the responsibilities outlined in chapter 3 is the best way to address the lack of strategic direction?**

As explained above, this should be fulfilled by Ofgem by working with the industry to deliver the ambition of its Strategic Narrative. Otherwise it will just add another layer of bureaucracy. In any case both options need to go through a rigorous cost-benefit analysis – we are sceptical that the CBA provided in the Consultation does not even provide sufficient qualitative analysis, yet alone numbers.

At Panel meetings on many occasions we have requested a "steer" from Ofgem – sometimes formally, and more often informally – to deal with specific issues. Unfortunately, this has often failed because Ofgem does not want to "fetter its discretion" and instead of working with a clear view the Panel has been left to ask for unnecessary work that takes longer. This seems a very inefficient process and would be much better if Ofgem worked pragmatically and cooperatively with the Panel using its current powers.

The Review should investigate fully reasons why Ofgem should not carry out this role.

> **11. Do you agree with the objectives and responsibilities envisaged for the strategic function, and are there any additional objectives or responsibilities the strategic function should have?**

As above, we do not believe that this role is necessary – Ofgem should be able to discharge this role already within its current powers.

> **12. How may this new function potentially impact the roles and responsibilities of other parts of the framework? Do you foresee any unintended consequences?**

The Review should consider carefully where it is best to locate expertise on the Codes – close to the customer (i.e. the industry parties working day to day with them) – or several stages removed. As stated elsewhere, the scope of the review must consider the ultimate aim of being able to be delivered; going too wide is likely to delay reform and perpetuate ongoing uncertainty.

Industry involvement in the Codes is a great strength: it not only draws on the experience and diverse (sometimes very detailed) knowledge, but there is a natural driver on the industry parties to develop robust and enduring solutions to sometimes very complex and techy issues. Taking this linkage away will be deeply detrimental.

The review should also examine the challenges of staffing the Strategic Body function and explain how it will be staffed and where they will be recruited from. At the moment the industry expertise we draw on comes from a deep pool of talent – we draw on the necessary skills for each issue. Trying to duplicate/create all these skills in the Strategic Body will be very difficult and most likely involve overstaffing, or serious competency gaps. Allied to these concerns are the likely increase in overall costs for the industry to bear – these will ultimately be borne by end consumers.

13. What are your views on how the strategic direction should be developed and implemented (including the option of establishing a strategy board to aid engagement)?

These processes are already there at a high level – Ofgem's annual Strategic Narrative. However, this needs to be translated into working level with each Code, and we would welcome having constructive, executable and two-way engagement with Ofgem in the BSC Panel. For example, for the BSC ELEXON publishes a business plan every year where it explains the activities and focus for next year's work. The industry, Ofgem and BEIS have the opportunity to comment on the Business Plan as it is consulted upon through an open consultation.

As explained elsewhere in this document we are deeply concerns that the Strategy Board could be an unnecessary duplication in the industry structures with considerable increased costs.

14. Do you think that the scope of the strategic function should be limited to taking account of the Government's vision for the energy sector and translating it into a plan for the industry codes framework, or are there other areas it should address? (for example, impact on vulnerable consumers)?

It should not go further – it is already too large a scope.

We refer to previous answers on our view of the need for a new Strategic Function and the need to make existing processes turn into working practice with the industry. Taking on more wide-ranging responsibilities is likely to lead to even less likelihood of clear direction to the industry.

For consumers including vulnerable customers we have found that having 2/10 panel representatives on the BSC Panel results in a strong consideration of customers' needs, and we welcome it.

4 EMPOWERED AND ACCOUNTABLE CODE MANAGEMENT & INDEPENDENT DECISION MAKING

15. Do you agree that in addition to the current responsibilities that code administrators have, that a. the code manager function should also have the following responsibilities:
a. identifying, proposing and developing changes (analysis, legal drafting etc.), including understanding the impacts;
b. making decisions on some changes, or making recommendations to the strategic body; and
c. prioritising which changes are progressed.

The Review should not confuse the legal "Codes" with Code Management. Merging Codes should not be confused with merging their governance, modification etc. Merging Codes should focus on merging their administration first – streamlining and aligning processes by working with industry to bring about the necessary changes in the Codes themselves.

a)   The Code Manager function needs to work with industry and in general be led by industry needs rather than second guessing them. We certainly agree that the Code Manager should be responsible for legal drafting to ensure consistent legal style, and should be supporting modifications with suitable analysis and impact assessments. Any Party can suggest a modification, and Elexon provides support in this process, so it is not onerous. Furthermore, the BSC allows for the Panel to raise its own modifications but only in limited circumstances because the Panel believes that industry is better placed to decide on which modifications to bring forward.

b)   We get generally get better decisions in the BSC because of industry involvement through workgroups and consultations. The BSC already allows for self-governance modifications and we look to use this process where we can. Ofgem is a major part of the modification process for all Codes and can slow progress down significantly – we estimate that in recent years the time a modification has sat with Ofgem is 10-15% of the time from proposal to Panel decision (although some Mods like P361 this far greater), so the Strategic Body will have to carry this responsibility as well.

c)   The Panel has discussed the issue of prioritisation on many occasions in previous years and is very much against the idea of being able to prioritise modifications because in other Codes we suspect it is probably symptomatic of a lack of resources and this goes against a principle of allowing all Parties to make suggestions to improve the Code. Furthermore, it is far too open to manipulation – for whatever reason be it costing a lot for a Code Manager worried about profits having strong distributional impacts, or changing the competitive landscape.

16. What is the best way to ensure coherent end-to-end changes to the codes and related systems? For example, is it through having end-to-end code and system managers?

Many end-to-end changes to the Codes would be eased by having similar change processes in each of the Codes and Ofgem taking a proactive working approach in the change.

In our experience, having Elexon in charge of the relative system changes works very well because it aligns their responsibility with their authority – i.e. it has a strong incentive to make it all work.

17. Should the approach differ on a case-by case basis (i.e. depending on the code or system in question)?

In the longer term, it is desirable that the Codes have a great deal of commonality in their processes, governances and accountabilities. This will help smaller parties to engage in the process more and will reduce the amount of time and effort at the industry and code level to bring new changes through

However, looking to achieving positive outcomes by the mid-2020s, we believe that the Review needs to identify the specific problems in individual Codes and then prioritise the solutions to them.

18. Do you agree that the code manager function should be accountable to the strategic body and that this should be via a licence or contract?

Definitely not.

We have already outlined our arguments why the Code Manager should be accountable to the industry.

The not-for-profit model at Elexon has a proven track record of cost efficiency and customer satisfaction – Elexon has continually featured at the top of Ofgem's customer satisfaction surveys since they started, and we believe that this business model is a key structural reason behind this.

Licensing and contracting for the Code Manager functions will be expensive mistakes despite their seductive attraction of Code Mangers being held to account by a single body of being borne of competitive processes:

- The DCC is the only example of a comparable licensed body, yet it has an allowed profit margin of 15% - far in excess of our estimate of current costs in the Code bodies. We challenge the Review to demonstrate why this will be any different

- Putting Codes out to competitive tender will require competent bodies to run the process (who has that expertise?) and be seriously at risk of losing the continuity (i.e. expertise) that the industry so needs.

- Factoring in the commercial risks of licensing will also result in the industry bearing inevitable higher costs.

Ofgem already has considerable powers and influence within the Code Bodies to achieve many of the aims of this Review if only it was to use them.

Please note questions 19- 26 only apply in respect of Model 1 (code manager function and a strategic body).

19. Are there more effective ways that a code manager function's accountability to the strategic body could be enshrined other than in a licence or contract?

We do not believe that it is efficient for the Code Manger function to be accountable to the Strategic Body – far better alignment is achieved by having the Code Managers being responsible to their "customers" i.e. the industry.

As outlined in Q18, licensing or contracting for the Code Manager function will result in higher industry costs and carry the risk of losing the enduring expertise that resides in the Code Managers.

20. Do you agree that we should not consider further a model whereby code managers are accountable to industry?

No – we believe that this is the best possible model. If the BSCCo (Elexon) fails to do perform, the industry is able to remove its Board. We approved to make the changes to the governance in the BSC two years ago to address any lack of clarity in the need for BSCCo to perform its role.

The not-for-profit model has served Elexon and the delivery of the BSC very well over the years and its high customer feedback should be seen as a success in industry alignment.

Code Managers that are conflicted by their ownership (or having profit motives) – e.g. NGESO, Gemserv, Electralink are likely to have less customer satisfaction because the Code Manager will have a separate agenda of making profits. We see this in the need for modification prioritisation for example.

21. Do you have views on whether the code manager function should be appointed following a competitive tender process or other competition?

We strongly oppose the concept of competitive tendering for Code Manager functions because the very nature of the role means that a competitive process will fail in some way or other:

- Who will run the tendering process? Does Ofgem (or the SB) have the necessary skills.

- How many realistic competitors are going to be interested – this could actually put up the costs if competition is limited

- We are very concerned that the need for continuity of expertise and knowledge will be put at risk. This process might be very open to cherry-picking, leaving major gaps in the industry.

We should point out that the BSC has successfully cut overall costs since 2001, running an efficient operation whilst providing complete and non-discriminatory support to all types of market participant. The risk is that we end up with a cost cutting exercise, rather than a value for money proposition.

22. Do you think the code manager function should be established by the strategic body creating a body or bodies?

No

A far more pragmatic approach will be to evolve the current Code Bodies on a case-by-case basis. This will then recognise the different situations that each Code is in, and their particular requirements.

If the code managers were established in this way, would we need to consider any alternative approaches to funding or accountability?

As stated before, the business model of the Code Manager being funded by Parties on a not-for-profit basis has stood the test of time very well for Elexon.

Removal of structural conflicts of interest, such as ownership or profit motives is highly desirable.

23. In terms of establishing/choosing the code manager function, do you agree that we should not consider further:
a. requiring an existing licensee to become the code manager; and/or
b. requiring a licensee (or group of licensees) to create the code manager?

As stated before, we do not believe that the licensing structure is necessary or appropriate to deliver the desired outcomes of the view – the arguments for licensing code managers are not supported by evidence, and licensing Code Managers will have several undesirable consequences.

24. What would be the most effective way to ensure the code manager function offers value for money (for example, through price controls or budget scrutiny)? More broadly, what is the right incentive framework to place on the code manager function?

The not-for-profit business model operated by Elexon has a proven track record of delivering value for money and it should be adopted in other Codes where possible. Parties' role in the governance provides suitable cost efficiency while giving Elexon the discretion to put resources in the right place. For example, the Parties approved Elexon's plans to upgrade its IT systems last year to make them more flexible and adaptable in a way that we expect in the coming years.

Price controls are likely to lead to inefficient deployment of resources or create their own internal overheads at Ofgem and each Code Manager as they seek to support their own position. It would be unfortunate if a doctrine of cutting costs at all costs were to override industry need for value for money.

In the BSC the Parties approve the Budget each year. Putting the responsibility for budget scrutiny elsewhere (e.g. Ofgem) will have the drawbacks of lesser understanding of the underlying needs and potential for political intervention (even if this is just caught up in the generality of public sector spending constraints).

25. Are there any factors that:
a. would stop parties (including code administrators) from becoming a code manager
b. should prevent parties from becoming a code manager (e.g. do you agree that licensees should not be able to exercise control of the code managers).

Any organisation that has conflicts of interest should be excluded e.g. NGESO, DNOs, TOs

26. How should the code manager function be funded (for example through licence fees or by parties to the code(s)?

As outlined in Q24 we recommend the not-for profit model – i.e. parties to the Codes – as an enduring efficient and effective model.

5 CODE SIMPLIFICATION & CONSOLIDATION

> **27. Are there any quick wins that could be realised in terms of code consolidation and simplification?**

We see a strong case for actually merging the BSC and CUSC, and good arguments for doing the same with the Grid Code and Distribution Codes as opposed to aligning them first. These Codes cover many of the cross-code activities likely in the next few years, so merging them will remove a significant amount of the need for any other body to coordinate/adjudicate between the different Codes.

Removal of the CUSC and Grid Code will remove a lot of industry complaints against the NGESO for acting against the will of the Parties because of its own business needs, for example prioritising systems developments. Because of the obligations on Codes Administrators to not discriminate ESO/NG will continue to have a very strong voice and we therefore see this being a low risk way of improving the operation of the Codes.

Wholesale redrafting of the Codes is likely to be a very expensive exercise – these are legal documents and can affect all parts of the industry – so the benefits should be carefully considered against the costs. Opportunities to simplify the BSC has been a subject of a specific initiative at Elexon for the past four years, and the Panel will continue to support this.

Although the REC is repeatedly referenced in the consultation document as setting new standards for other Codes to follow, we have strong concerns in its detailed processes and the exclusion of accountability to the industry itself.

> **28. How many codes would best deliver on the outcomes we are seeking under these reforms?**

The Review should focus on what is workable, not aim for a specific number of Codes.

> **29. Which option (one code manager versus multiple) would best deliver on the outcomes we are seeking under these reforms?**

Given the specialist understanding required under each Code, a single transition to one Code Manager is not going to work, even if it remains a very long term aim. Even in the medium term, we see a need for several Code Managers because the span of control limitations and each merger needs to be manageable. Significant alignment of the Codes processes, Governance, and applicable objectives will achieve far better many of the aims of the Review.

> **30. Which of our consolidation options would best deliver the outcomes we are seeking to achieve? Please provide evidence for your examples.**

We have explained why we have strong misgivings about both Model 1 and Model 2. A variant of Model 1 with Ofgem acting as the Strategic Body but without significantly changing other governance processes and some Code consolidation could be seen as a pragmatic first step.

31. Do you agree that the codes should be digitalised?

A very useful step that could be termed "digitalisation of the Codes" would be to publish them on a single website in downloadable formats.

However, the very wording of the of this question suggests that the Review needs to now fully understand the complex IT systems that underpin the Codes' operation. Their management is intimately connected to the Codes themselves and the "digital" aspects of the Codes are very important, as shown by the failure to deliver EBS by NGESO. Changes to the Codes (as witnessed by the failures to deliver EBS and the well documented problems in Project Nexus) require detailed and technical understanding of the underlying systems. Even simple addition of data fields can very difficult to deal with if the underlying systems architecture is not able to support the change. We have raised earlier the ability or indeed wisdom of the Strategic Body in dealing with IT systems.

Given that digital information underpins the day to day commercial operation of the industry, the BMRS (operated by Elexon) is a key route by which Parties access industry information. Elexon does a diligent job to make sure this system is responsive to Parties needs and because Panel members are active in the industry, operational and development needs for BMRS are regularly discussed and acted on. This highlights the importance of industry involvement in governance as many industry participants are reliant on the data published and processed on these websites.

Elexon's website contains wealth of information about the BSC which is used by Parties continually – it fits with the BSC Panel's philosophy of transparency and accessibility – for example the timely publishing of Panel minutes, educational material and specific documents.

Webinars are extensively used, but the Panel encourages Elexon to use the delivery modes – often Parties prefer the face to face engagement supported by web-based material.

6 MONITORING AND COMPLIANCE

32. What role should industry have in monitoring code compliance or making decisions on measures needed to address any identified non-compliance?

The BSC Panel operates a highly sophisticated risk-based assurance process. The ambition is to work with Parties to pre-empt non-compliance as far as possible, and work with Parties to support them out of non-compliance. This has worked very well generally. Our processes have a graduated level of enforcement that generally works well – and the provisions of the BSC allow for sanctions to against non-compliance e.g. credit defaults and Supplier Charges.

At this stage, we do not see the need to have stronger sanctions, although we have some concerns that the general profit squeeze in the industry is making enforcing compliance harder.

If Code Mangers fail to deliver, for example NGESO's EBS system delivery, we expect Ofgem to take action, as we would on ourselves.

33. Which of the two models we propose would better facilitate effective monitoring and compliance arrangements?
We do not believe either deliver any better. Ofgem can give strategic direction now, and this should be translated into action at working level. In the last eighteen months the BSC Panel has repeatedly voiced concern about "Supplier in a box" and that the prospect of mutualising their losses to the industry should require Ofgem to take early action – but Ofgem didn't. Panel members told Ofgem that Solarplicity appeared to be withholding RO payments to pay for more pressing industry payments (like the BSC), but we saw no action.

34. With Model 2 - integrated rule-making body - should the IRMB have responsibility for imposing measures (where a party is non-compliant with the code) or should this be for another organisation?
No. Please see our response to Q34 – Ofgem can carry this responsibility and should support the efforts of the Code Managers to deal with non-compliance in a timely manner.